

Action brought on 6 January 2009 — Dredging International and Ondernemingen Jan de Nul v EMSA

(Case T-8/09)

(2009/C 82/48)

Language of the case: English

Parties

Applicant: Dredging International NV (Zwijndrecht, Belgium) and Ondernemingen Jan de Nul NV (Hofstade-Aalst, Belgium) (represented by: R. Martens, lawyer)

Defendant: European Maritime Safety Agency (EMSA)

Form of order sought

- annul EMSA's decision to reject the tender from the Joint Venture Oil Combat (JVOC) constituted by the applicants and to award the contract to the successful contractor;
- declare that the contract signed between EMSA and the successful contractor pursuant to procurement procedure EMSA/NEG/3/2008 is null and void;
- award damages as compensation for the loss that JVOC has incurred as a consequence of the contested decision, provisionally estimated at 725 500 EUR, to be increased by the moratory interest as from the date of the filing of this application;
- order that the Commission pay the costs of the proceedings, including the expenses for legal counsel incurred by JVOC.

Pleas in law and main arguments

In the present case the applicants seek the annulment of the defendant's decision to reject their bid submitted in response to a call for a tender EMSA/NEG/3/2008 (Lot 2: North Sea) regarding the service contracts for stand-by oil recovery vessel(s) ⁽¹⁾ and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of their claims, the applicants put forward four pleas in law.

First, they argue that by refusing to provide the applicants with the information they requested regarding the reasons for rejection of the bid submitted by them and on the characteristics and relative advantages of the bid of the successful contractor the defendant infringed Article 135(2) of the Regulation ⁽²⁾, Article 253 EC and the essential procedural requirements of duty to state reasons and of respect for the rights of defence. The applicants further claim that the defendant failed to suspend the signature of the contract with the successful tenderer pending the exchange of relevant information with the applicants by which it violated Article 105(2) of the financial

regulation ⁽³⁾ and Article 158a(1) of the Commission Regulation No 2342/2002 ⁽⁴⁾.

Second, the applicants submit that the defendant committed manifest errors of assessment while evaluating the bid submitted by the successful tenderer by which it infringed the principles of equal treatment and non-discrimination as stated in Article 89 of the financial regulation.

Third, the applicants contend that the defendant committed several manifest errors of assessment in its decision to reject the applicants' bid for the reason of non compliance with Article 12.2 of the tender specifications without further examining the applicants' arguments. In the applicants' opinion, the defendant infringed therefore the principles of proportionality, equal treatment and non-discrimination in violation of Article 89(1) of the financial regulation.

Fourth, the applicants claim that in the interpretation given by the defendant to Article 12.2 of tender specifications, the budget ceiling is manifestly unreasonable and does not allow that any confirming tenders are submitted.

⁽¹⁾ OJ 2008/S 48-065631.

⁽²⁾ The regulation of the European Maritime Safety Agency adopted on 9 December 2003 laying down detailed rules for the implementation of the financial regulation of 9 December 2003 which applies to the budget of the European Maritime Safety Agency adopted by the Administrative Board on 3 July 2003.

⁽³⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, p. 1).

⁽⁴⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, p. 1).

Action brought on 9 January 2009 — Evropaiki Dynamiki v Commission

(Case T-17/09)

(2009/C 82/49)

Language of the case: English

Parties

Applicant: Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: Commission of the European Communities